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Before the
Federal Communications Commission
Washington, D.C. 20554
DISPATCHED

In the Matter of)
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)
Amendment of Section 73.202(b),) MM Docket No. 98-176
Table of Allotments,) RM-9363
FM Broadcast Stations.)
(Killeen and Cedar Park, Texas))

NOTICE OF PROPOSED RULE MAKING

Adopted: September 16, 1998

Released: September 25 , 1998

Comment Date: November 16, 1998

Reply Date: December 1, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by LBJS Broadcasting Company, LP ("LBJS"), requesting the reallocation of Channel 227C from Killeen, Texas, to Cedar Park, Texas, as that community's first local service. LBJS also requests modification of its license for Station KAJZ, Killeen, to specify Cedar Park as its community of license. LBJS indicated that it would file an application for Channel 227C at Cedar Park if the channel is allotted to the community.

2. LBJS filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, LBJS states that Cedar Park was incorporated in 1973, has a 1995 population of 14,000 and has a local government which consists of nine departments. According to LBJS, Cedar Park has its own police and fire departments, public works, library, parks and recreation department and a municipal court system, as well as one high school, two middle schools, and seven elementary schools. LBJS further states that the city's businesses include nine banks, six insurance companies and sixteen restaurants, many of which have names that identify themselves as being

part of the community of Cedar Park.¹ LBJS also points out that Cedar Park has its own local newspaper and Chamber of Commerce.

3. LBJS states that Station KAJZ is a pre-1964-grandfathered short-spaced station and this grandfathered short-spacing survives the proposed community switch. Specifically, Station KAJZ is short-spaced with Station KLBJ, Austin, Texas (also owned by LBJS), another pre-1964 grandfathered station. LBJS contends that its proposed reallocation does not involve the relocation of KAJZ's transmitter, and, therefore, no new short-spacings will be created or exacerbated.² LBJS believes that the reallocation of Channel 227C to Cedar Park complies with the Commission's minimum distance separation requirements as contained in Section 73.207 of the Rules.

4. In Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), the Commission reallocated Channel 244A from Newnan to Peachtree City and modified the license of Station WJKJ to specify Peachtree City as the new community of license. Station WJKJ was a "grandfathered" (pre-1964, before the new spacing requirements) that did not meet the current spacing requirements set forth in Section 73.207 of the Rules. The proposal in Newnan and Peachtree, *supra*, did not involve any change in the technical facilities of Station WJKJ. In taking this action, we recognized that we were creating a new short-spaced allotment in contravention of Section 73.207 of the Rules. Our rationale for this action was that "grandfathered" FM stations were in compliance with our Rules when authorized and should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our Rules.

5. We are requesting specific comment on whether this policy should be continued and, if so, whether it should be extended to post-1964 FM stations that are not now in conformity with

¹ LBJS listed the Cedar Park Cafe, Cedar Park Bar-B-Que, Cedar Park Tire and Service, Cedar Pointe Luxury Apartment Homes and Cedar Park Turf Grass & Garden.

² In accordance with Commission policy, if a proponent intends to relocate its authorized facility from a rural community to a suburban community that is adjacent to an urbanized area, and from which its intended operation would place a city grade (70 dBu) signal over 50% or more of the urbanized area, the petitioner is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). This proposal presents a slightly different approach to the Commission's policies in that no site change is requested and Station KAJZ currently serves the Austin Urbanized area as well as the Killeen Urbanized area, the requested new community. Under the circumstances, we believe that based upon the coverage being provided to both urbanized areas, which will not change if the proposal is granted, a Tuck analysis is not necessary.

our current spacing requirements.³ In both instances, the result is removing one allotment from the FM Table of Allotments that does not comply with current spacing requirements and adding an allotment that does not comply with current spacing requirements at a new community.

6. Channel 227C can be allotted to Cedar Park, Texas, at LBJS's current licensed site.⁴ At this site, Station KAJZ will remain short-spaced to Station KSTV, Channel 226C3, Dublin, Texas, Station KPLV, Channel 227C1, Port Lavaca, Texas, Station KKZN, Channel 227C2, Haltom City, Texas, and Station KLBJ, Channel 229C, Austin, Texas. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 227C at Cedar Park or require LBJS to demonstrate the availability of an additional equivalent class channel for use by such parties.

7. In view of the fact that the proposed allotment could provide a first local service to Cedar Park without depriving Killeen of its sole local service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 227C to Cedar Park, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Killeen and Cedar Park, as follows:

Community	Channel No.	
	Present	Proposed
Cedar Park, Texas	-----	227C
Killeen, Texas	222A, 227C	222A

8. IT IS ORDERED, That the Commission's Office of Public Affairs, Reference Division, shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Cen-Tex Media, Inc.	Coastal Wireless Company
Station KSTV (Dublin)	Station KPLV (Port Lavaca)
3209 West Washington Street	Post Office Box 1130
Stephensville, Texas 76401	Victoria, Texas 77902

³ This concern would also be applied to three-kilowatt (pre-1989) Class A FM stations seeking to change a community of license without a change in technical facilities. See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A Stations, 4 FCC Rcd 6375 (1989), recon. 6 FCC Rcd 3417 (1991).

⁴ The coordinates for Channel 227C at Cedar Park are 30-43-34 and 97-59-23. Although Cedar Park is located within 320 kilometers (199 miles) of the Mexican border, it is not necessary to request concurrence at this time since LBJS is not proposing a site change for Station KAJZ.

Texas Star Radio, Inc.
Station KKZN (Haltom City)
P. O. Box 2026
York, Pennsylvania 17401

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **November 16, 1998**, and reply comments on or before **December 1, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard M. Weiss
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.